

SO ORDERED.**SIGNED this 8th day of December, 2020.**

A handwritten signature in cursive script, reading "Lena Mansori James", is written over a horizontal line.

LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:)	
)	
Northwest Child)	Chapter 11
Development Centers, Inc.)	
)	Case No. 20-50632
Debtor.)	
_____)	

ORDER

DENYING MOTION TO EXTEND TIME TO FILE SUBCHAPTER V PLAN

THIS MATTER came before the Court on the Debtor's Motion to Extend Time to File Subchapter V Plan (Docket No. 77, the "Motion"). For the reasons set forth below, the Court finds the Debtor has failed to meet its burden under 11 U.S.C. § 1189(b)¹ to extend the period in which to file the plan.

The Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code on August 17, 2020. On the same day, the Debtor amended its petition to elect to proceed under subchapter V. The Debtor operates a daycare center offering full and part-time childcare for special needs children. In its initial schedules, the Debtor listed \$69,411.73 in cash or cash equivalents, \$7,225.00 in office and educational equipment, and two vehicles of minimal value. On September 16, 2020, the Debtor amended its schedules to list an ownership interest in real property at 2530 Pittsburg Avenue, Winston-Salem, North Carolina (the "Property"), which, according to the Debtor's representations, formerly served as an additional daycare

¹ All citations to statutory sections refer to Title 11, United States Code, unless otherwise indicated.

operation for the Debtor until it was vacated and closed several years ago. In its § 1188(c) status report filed on October 6, 2020 (Docket No. 66), the Debtor represented that it was investigating a potential sale, improvement, and leaseback of the building space and had already interviewed several real estate brokers to aid the Debtor in that endeavor.

Subchapter V of chapter 11 was added to the Bankruptcy Code through the Small Business Reorganization Act of 2019, which became effective on February 19, 2020. Because subchapter V is “intended to be an expedited process[.]” *In re Seven Stars on the Hudson Corp.*, 618 B.R. 333, 347 (Bankr. S.D. Fla. 2020), there are certain accelerated deadlines a debtor must meet if electing to proceed under subchapter V. Foremost among these deadlines is the requirement that a subchapter V debtor “file a plan not later than 90 days after the order for relief.” 11 U.S.C. § 1189(b).

Having filed its petition on August 17, 2020, the Debtor was required to file a plan not later than November 16, 2020. The next day, on November 17, 2020, the Debtor filed the instant Motion, requesting a two-week extension of the deadline² because a scheduled walkthrough of the Property “was unable to occur due to weather and potential COVID-19 exposure” (Docket No. 77). The Motion does not elaborate any further on this rationale but notes that the walkthrough was rescheduled for November 24, 2020. The Debtor did not attach any affidavits or exhibits to the Motion.

The Court held a virtual hearing on the Motion on December 1, 2020, at which Erik Harvey appeared on behalf of the Debtor, Samantha Brumbaugh appeared as the subchapter V trustee (the “Trustee”), Sarah Bruce appeared on behalf of the United States Bankruptcy Administrator (the “BA”), and John Lawson appeared on behalf of the City of Winston-Salem. Shortly before the hearing, the

² The Motion inaccurately states the deadline for filing a subchapter V plan as Tuesday, November 17, 2020. The actual deadline, which is 90 days from the petition date, fell on Monday, November 16, 2020. The Debtor’s error, however, does not preclude consideration of the Motion because subchapter V does not require motions to extend under § 1189(b) to be filed prior to expiration of the deadline. See *In re Trepetin*, 617 B.R. 841, 847 n. 9 (Bankr. D. Md. 2020); 8 COLLIER ON BANKRUPTCY ¶ 1189.03 (16th ed. 2020).

Debtor filed its subchapter V plan (Docket No. 88). At the hearing, the Debtor's attorney reiterated the points made in the Motion about the cancellation of the scheduled walkthrough but did not move to admit any testimony or documentary evidence into the record. The Trustee confirmed that the walkthrough was originally scheduled for October 29, 2020 but was postponed due to severe weather. The Trustee further reported that a rescheduled walkthrough did take place on November 24, 2020 but was limited to an examination of the building's exterior. While the Trustee and the City of Winston-Salem did not oppose the relief requested in the Motion, the BA asserted that the Debtor did not provide sufficient evidence to demonstrate an extension of the deadline was merited.

While subchapter V provides for the possibility of extending the plan filing deadline, the debtor's ability to obtain such an extension is specifically circumscribed by the language within the pertinent section:

(b) DEADLINE. – The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that *the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.*

11. U.S.C. § 1189(b) (emphasis added).

As one bankruptcy court described, “a plain reading of the phrase” indicates § 1189(b) sets “a clearly higher standard than the mere ‘for cause’ standard set forth in both Federal Rule of Bankruptcy Procedure 9006(b) (governing extensions of time generally) and § 1121(d)(1) (governing extensions of a non-subchapter V debtor's exclusive period to file a new chapter 11 plan).” *In re Seven Stars*, 618 B.R. at 344.

While the phrasing “attributable to circumstances for which the debtor should not justly be held accountable” is unique within chapter 11, it mirrors that used in chapter 12 cases.³ Given the nascent status of subchapter V, those courts considering extensions of the deadline in § 1189(b) have looked to its chapter 12 counterpart, § 1221, for guidance. *See In re Trepetin*, 617 B.R. 841, 848 (Bankr. D.

³ *See* 11 U.S.C. § 1221 (“The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.”).

Md. 2020); *In re Seven Stars*, 618 B.R. at 344. The current language in § 1189(b) and § 1221 embodies a more difficult standard than that originally employed during the implementation of chapter 12. While § 1221 originally provided that the 90-day limit could be extended if “substantially justified,” which itself was a higher standard than embodied in Rule 9006(b), Congress amended the section in 1993 to its current form “to make the standard more difficult for debtors to have the 90-day limit extended.” 8 COLLIER ON BANKRUPTCY ¶ 1189.03 (16th ed. 2020) (citing 139 Cong. Rec. S 10,268 (Aug. 3, 1993)). As COLLIER described of § 1221, “it is appropriate that the debtor should be required to meet a stringent burden” and a court “should allow an extension only if the debtor clearly demonstrates that the *debtor’s inability to file a plan is due to circumstances that are beyond the debtor’s control.*” 8 COLLIER ON BANKRUPTCY ¶ 1221.01 (16th ed. 2020) (emphasis added).

Those courts that have considered extensions under § 1189(b) disagree as to the exact burden a debtor must meet to extend the deadline to file a subchapter V plan, at least as it relates to delayed subchapter V elections. *Compare In re Trepetin*, 617 B.R. at 849 (concluding that the question “thus becomes whether the Debtor is fairly responsible for his inability to timely...file a plan”) *with In re Seven Stars*, 618 B.R. at 344 (disagreeing with the *Trepetin* approach and finding its “fairly responsible” framing to be “a slightly different question than the inquiry posed by the statute.”); *see also In re Wetter*, 620 B.R. 243, 251 (Bankr. W.D. Va. 2020) (believing “*Seven Stars* to be too rigid in its application of § 1189(b) and that *Trepetin* charts a better path.”)

The procedural posture of this case and the context in which the extension under § 1189(b) is requested stand in contrast to *Trepetin*, *Seven Stars*, and *Wetter*, as the stated delay was not due to a late subchapter V election. Regardless, it is not necessary for the Court to take a position on whether *Trepetin* or *Seven Stars* presents the better reasoned approach, nor is it necessary to further elaborate upon the exact parameters of the § 1189(b) extension standard, because the Debtor here clearly fails to meet the burden under either approach.

The Debtor's explanation of the circumstances causing the delay in filing the plan is limited to a single sentence in the Motion, unsupported by affidavits, exhibits, or direct testimony. The Debtor attributes the delay to the cancellation of a planned walkthrough of the Property due to "weather" and "potential COVID-19 exposure." Certainly, inclement weather and pandemics⁴ are circumstances beyond the Debtor's control, but the Debtor must demonstrate that these circumstances prevented the Debtor from timely filing a plan. While the weather-induced cancellation may explain the Debtor's inability to conduct a planned walkthrough in late October, the Debtor did not explain why the walkthrough was rescheduled for a date after the plan deadline. Moreover, the cancelled walkthrough appears unconnected from, and does not sufficiently explain why the Debtor was unable to timely file a plan. The Debtor was unable to articulate why the delay in conducting this walkthrough, which the Debtor's attorney stated did not actually include any examination of the interior of the building, inhibited its ability to timely file a plan.

Subchapter V is designed to be an expedited process, *In re Wetter*, 620 B.R. 243, 251 (Bankr. W.D. Va. 2020) (quoting *In re Seven Stars*, 618 B.R. at 346)), and, while extensions of deadlines are permitted under § 1189(b), Congress imposed a heightened burden on debtors seeking to obtain those extensions. Based on the record before it, the Court finds the Debtor has not met its burden of demonstrating that the need for an extension of the plan deadline is attributable to circumstances for which the Debtor should not justly be held accountable.

Accordingly, IT IS HEREBY ORDERED that the Debtor's Motion to Extend Time to File Subchapter V Plan is denied.

END OF DOCUMENT

⁴ The Debtor did not explain why "potential COVID-19 exposure" prevented a planned walkthrough of the Property in late October but did not prevent the rescheduled walkthrough on November 24, 2020, particularly when the local number of confirmed cases and hospitalizations continued to rise. See Richard Craver, *Forsyth Reports 268 New COVID Cases Friday. More Patients are Hospitalized in the Triad Region than in any Other*, WINSTON-SALEM JOURNAL (Nov. 27, 2020), https://journalnow.com/news/local/forsyth-reports-268-new-covid-cases-friday-more-patients-are-hospitalized-in-triad-region-than/article_7738d3f0-30d7-11eb-8ef3-d7234e6b8d9d.html.

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